

**State of New Hampshire
Office of Licensed Allied Health Professionals
Physical Therapy Governing Board
Concord, New Hampshire 03301**

In the Matter of:
Janine MacGowan, PTA
No.: 0375
(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, the New Hampshire Office of Licensed Allied Health Professionals Physical Therapy Governing Board ("Board") and Janine MacGowan, P.T.A., ("Ms. MacGowan" or "Respondent"), a physical therapist assistant who was licensed by the Board on January 5, 1994, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 328-A; RSA 328-F:5, II; RSA 328-F:23, I; RSA 541-A; New Hampshire Office of Licensed Allied Health Professionals Administrative Rule ("Ahp") 203 and 209; and New Hampshire Board of Medicine Administrative Rule ("Med") 808.01 the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physical therapists. Pursuant to RSA 328-F:24, VI; RSA 541-A; and Ahp 214 the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice as a physical therapist assistant ("PTA") in the State of New Hampshire on January 5, 1994. Respondent

holds license number 0375. In 2005, Respondent practiced as an in-home physical therapist assistant with Nurses PRN, Inc.

3. On or about October 5, 2005, the Board received information that the Merrimack, New Hampshire Police Department had arrested Janine MacGowan, PTA for being in possession of a controlled drug which had been prescribed for the client in whose home she was working as a physical therapist assistant.
4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Ms. McGowan's arrest and subsequent misdemeanor conviction for possession of the controlled drug Oxycodone.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that Respondent engaged in professional misconduct, in violation of RSA 328-F: 23, II (b) and Med 808.01 (3), by the following facts:
 - A. On or about October 5, 2005, Ms. McGowan pleaded guilty to one count of Class A misdemeanor possession of the controlled drug Oxycodone.
 - B. The Oxycodone had been prescribed for the client in whose home Ms. McGowan was providing physical therapist assistant services at the time.
6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 328-A: 3, III; RSA 328-F:23, II (b) and Med 808.01 (3);
7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a physical therapist assistant in the State of New Hampshire.

8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 328-F:23, II:

A. Respondent's license to practice as a physical therapist assistant is **SUSPENDED** for a period of one year. This suspension shall be retroactive commencing October 31, 2005 and ending October 31, 2006.

B. Upon lifting of the suspension, Respondent's license to practice as a physical therapist assistant shall be **LIMITED** until further order of the Board as follows:

1. Respondent shall not provide services as a physical therapist assistant in a home healthcare setting until further order of the Board; and

2. Prior to October 13, 2006, Respondent shall successfully complete a course in professional ethics, which shall be pre-approved by the Board. Respondent shall provide documentation of her successful completion of the ethics course in writing to the Board. The course hours shall be in addition to the hours required by the Board for renewal of licensure.

C. Respondent shall continue to engage in any treatment, counseling, medical care or medication management care as recommended by those providers with whom she is or has been treating. For a period of two (2) years from the date of issuance of this *Settlement Agreement*, Respondent shall provide documentation in writing to the Board of her progress in of any medication management and treatment on a quarterly basis.

- D. Within fifteen (15) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a physical therapist assistant or work which requires licensure or certification as a physical therapist assistant or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials physical therapist assistant, with which Respondent is presently affiliated.
 - E. For a continuing period of one (1) year from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a physical therapist assistant or for work in any capacity which requires licensure or certification as a physical therapist assistant or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials physical therapists, to which Respondent may apply for any such professional privileges or recognition.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 328-F:23, II (j) and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future.

Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.
13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that her action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with her decision to enter into this agreement.
16. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced her right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.

17. Respondent is not under the influence of any drugs or alcohol at the time she signs this *Settlement Agreement*.
18. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.
19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

*In Re: N.H. Physical Therapy Governing Board
and Janine MacGowan, P.T.A.
Settlement Agreement*

FOR RESPONDENT

Date: 7/28/06

Janine MacGowan P.T.A.
Janine MacGowan, P.T.A.
Respondent

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 8/9/06

Robert P. Brunton, PT.
(Signature)

Robert P. Brunton, PT. (Chair)
(Print or Type Name)
Authorized Representative of the
New Hampshire Physical Therapy
Governing Board

/* Recused Board members:
Wendy Farricy, P.T.A.